

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

LYLE BREHM, et al.,

Plaintiffs,

v.

**CAPITAL GROWTH FINANCIAL,
INC., et al.,**

Defendants.

8:07CV254

ORDER

This matter is before the court on the plaintiffs' Motion to Compel ([Filing No. 419](#)). The plaintiffs filed an index of evidence ([Filing No. 425](#)) in support of the motion. The plaintiffs seek an order overruling objections and compelling the defendant Gerald Parker to "more fully and completely" respond to certain discovery interrogatories and requests for production of documents. The court has reviewed the discovery at issue. Mr. Parker lodged objections to various interrogatories and requests, then provided answers such as: "Objection, over burdensome, includes multiply questions that I can't possible answer accurately or produces. I currently do not have nay of theses documents. All documents were turned over to Brian Schuster when he took over control." **See** Filing No. 425 - [Ex. C](#). To the extent Mr. Parker answered despite the objections, the objections are waived. Absent the objections, the court finds Mr. Parker's responses to be complete and without manifest evasion. **See** [Fed. R. Civ. P. 33](#); [Fed. R. Civ. P. 37](#). Furthermore, the court cannot compel production of a document or information that does not exist or is not in the party's control. **See** [Healthcare Mgt Solutions, Inc. v. Hartle](#), No. 8:07CV05, 2007 WL 1726585, at *3 (D. Neb. 2007). Upon consideration,

IT IS ORDERED:

The plaintiffs' Motion to Compel ([Filing No. 419](#)) is granted, to the extent that Mr. Parker's objections are deemed waived, and denied in all other respects.

DATED this 12th day of November, 2010.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge